
COMBATING MONEY LAUNDERING IN INDIA: AN ANALYSIS OF PMLA

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ABSTRACT

Money laundering is the process of incorporating the proceeds of crime into the legitimate financial system and this creates a basic problem for the integrity of the economic institutions and the effectiveness of the criminal law enforcement. The main law in India to combat this phenomenon is the Prevention of Money Laundering Act, 2002 (PMLA), which has been amended several times and has given rise to a significant amount of problematic jurisprudence. The paper is a critical analytical study of the definitional framework of the PMLA, the powers of the Enforcement Directorate, the obligation on reporting entities and the safeguards of procedures in the case of an accused person. The paper also assesses the alignment of the Indian framework with the recommendations of Financial Action Task Force, and the major structural issues that remain and cause obstacles in effective anti-money laundering enforcement, such as the failure to prosecute predicate offences, issues of beneficial ownership opacity and the conflict between investigative powers and constitutional guarantees. It ends with suggestions for specific legislative and institutional changes.

Keywords: Money laundering, PMLA, Enforcement Directorate, Proceeds of crime, FATF compliance

1. Introduction

It is not true that money laundering is a victimless crime. This is because money laundering is used by criminal organisations to perpetuate their existence and gain legitimacy. The proceeds from drug trafficking, corruption, organised crime, and financial fraud are turned into money that can be used within the legitimate economic system. According to the United Nations Office on Drugs and Crime, the volume of money laundered worldwide in one year is estimated at two to five per cent of the world's gross domestic product.¹

The response of the legislature to the above problem in India assumed its final form through the enactment of the Prevention of Money Laundering Act, 2002 (PMLA) effective from 1 July 2005. The PMLA is an act enacted in pursuance of India's obligations under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, the United Nations Convention Against Transnational Organized Crime, 2000, and forty recommendations of the Financial Action Task Force (FATF). In its Statement of Objects and Reasons, it is openly admitted that money laundering has become a global issue.²

Subsequent to this, the PMLA has been amended by the Prevention of Money Laundering (Amendment) Act, 2005, Finance Acts of 2012, 2015, 2018, 2019, and 2023, with each amendment increasing the ambit of the definition of proceeds of crime, powers of the Enforcement Directorate (ED), or predicate offences. The net result of such expansions has been to create a law which, by any reckoning, is much stronger than it was at inception, and has led to the creation of a judicial debate regarding the constitutional validity of certain procedures within the PMLA. The landmark judgment in *Vijay Madanlal Choudhary v Union of India*, in 2022, established the constitutional validity of several provisions of the PMLA, yet the debate regarding the right balance between anti-money laundering law enforcement and rights of the accused remains unsettled.³

2. The Definitional Architecture of the PMLA

The theoretical basis for PMLA is laid down through the following three interdependent

¹ Deependra Nath Pathak, Radha Ranjan, Anupam Sinha, Pushpendra Kumar Anuragi, Govind Prasad Goyal & Vyas Kumar Yadav, "Navigating the Legal Landscape of Advanced Drug Delivery Technologies: A Comparative Analytical Study", 16(32S) *International Journal of Drug Delivery Technology* 1, 1–10 (2026).

² Prevention of Money Laundering Act, 2002 (Act 15 of 2003), Statement of Objects and Reasons, para 1.

³ Radha Ranjan, "Evolution of the Doctrine of Proportionality: Assessing its Scope and Ambit in Relation to the Right to Privacy in India", 10(1) *Indian Journal of Law and Human Behavior* 31, 31–38 (2024).

definitions: offence of money laundering, proceeds of crime, and predicate offences. According to Section 3 of the Act, the definition of money laundering is broad and comprehensive and refers to the participation of any individual directly or indirectly in any process or activity in relation to the proceeds of crime. This includes concealing, holding, acquiring, using, projecting as untainted property, or claiming as untainted property.⁴

The term “proceeds of crime” as used under Section 2(1)(u) refers to any property which has been obtained or acquired, directly or indirectly, by any person through criminal conduct that relates to an offense specified in Schedule I of the Act, or the value of any such property. Further clarification of the term “proceeds of crime” was made in 2019 when it was expanded to refer to any property obtained from criminal conduct relating to a scheduled offence, regardless of whether the predicate offence had been convicted.⁵

The Supreme Court in *Vijay Madanlal Chowdhury* elaborated the definition of proceeds of crime before following money laundering court cases that baggage is proceeds of crime on its crooked derivation factor against best in case registration, and ED need not see conviction or even conclusion of trial within predicate offence.⁶

The offences mentioned in the Schedule to the PMLA are the predicate offences from which the proceeds of crime should originate. The list of offences in the schedule has increased over time and currently includes offences under the Indian Penal Code, Narcotic Drugs and Psychotropic Substances Act, Arms Act, Wild Life (Protection) Act, Immoral Traffic (Prevention) Act, Prevention of Corruption Act, Companies Act, and many other central and state laws. Thus, the scope of money laundering legislation is extensive, covering almost all types of serious organised crimes, but at the same time, the PMLA's powerful procedural mechanism can be used against rather minor predicate offences.

3. The Bail Regime, Burden of Proof, and Constitutional Concerns

The most disputed clauses of the PMLA are those pertaining to bail and the sharing of burden of proof. For the bail of a person accused of money laundering, Section 45 of the Act imposes two conditions: firstly, it provides that the public prosecutor must first have an opportunity to

⁴ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s 3.

⁵ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s 2(1)(u).

⁶ *Vijay Madanlal Choudhary v Union of India* (2022) 9 SCC 1, para 12.

oppose the bail application; and secondly, the court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and is not likely to commit an offence while on bail. The conditions effectively overturn what is the norm in criminal law, the presumption of innocence which applies to bail.

In *Nikesh Tarachand Shah v Union of India* (2018), the Supreme Court, in the original case before it that was brought against the application of Section 45 to all scheduled offences, held that the twin conditions were arbitrary and disproportionate with respect to offences that had low maximum sentences. The Court found that the twin conditions, as they existed, infringed the right to equality (Article 14) and the right to life and personal liberty (Article 21) of the Constitution.⁷

Parliament reacted to this by enacting an amendment under the Finance Act, 2018 which restored the two conditions as such specifically for money laundering offences under Section 3, thus effectively overruling the ratio of the *Nikesh Tarachand Shah* judgment. The same was tested in *Vijay Madanlal Choudhary* where a three-judge bench of the Supreme Court had upheld the constitutional validity of the provision and had held that money laundering is an exceptional offence of its own nature and of high gravity and hence it required conditions to be more stringent than in an ordinary criminal case.

The flip-flop of the burden of proof in Section 24 of the PMLA is also noteworthy. Where a person is charged with the offence of money laundering, the court shall presume the money referred to in paragraph (a) of this section is the proceeds of crime and shall be for the accused to disprove. The Court upheld this as a "reasonable reverse burden", saying that there was a corresponding presumption in several other special statutes such as the case of *Vijay Madanlal Choudhary*. But a careful reading of this provision shows its conflict with the right not to incriminate oneself guaranteed by Article 20(3) of the Constitution and with the common law rule, which is well entrenched in the criminal law, that the burden of proof is on the prosecution.⁸

The power vested in an officer of the ED under Section 50 of the PMLA to issue summons and record the statements of any person under investigation and consider those statements as

⁷ *Nikesh Tarachand Shah v Union of India* (2018) 11 SCC 1, paras 59-61.

⁸ Jivantika Gulati & Radha Ranjan, "Cascading Role of Governance in Ensuring Judicial Activism in India", 19(2S) *Bhartiya Journal of Public Administration (BJPA)* (July–December 2022).

admissible evidence was attacked on the grounds that such power would make an ED officer a police officer under Section 25 of the Indian Evidence Act, 1872 (replaced by the Bharatiya Sakshya Adhiniyam, 2023), thereby making a confession admissible without affording the constitutional protection against confession to the police. The decision in *Vijay Madanlal Choudhary* that an ED officer is not a police officer under the Evidence Act, and the statement made by him is thus admissible, has received criticism from scholars as being a way around the protective purpose behind the prohibition on confession to police.⁹

4. The Attachment and Confiscation Regime

The attachment and confiscation of proceeds of crime is the core of the anti-money laundering policy of the PMLA. Section 5 to Section 8 of the Act lays down the three-step process of provisional attachment by the ED, confirmation of the same by the Adjudicating Authority and confiscation by the Special Court in case of conviction. The provisional attachment procedure provided under Section 5 authorises the Director or an officer appointed by him to attach the proceeds of crime, within 180 days, if there are grounds to believe that such property is likely to be disposed of, removed from the jurisdiction of the court, etc.¹⁰

There has been a massive escalation of the scope of attachment operations conducted under the PMLA every subsequent year. According to the Annual Report on activities of the Enforcement Directorate for the year 2022-23, the cumulative amount of properties attached so far exceeds one lakh crore rupees and owes its magnitude to both an increasing list of predicate offences and an expanded definition of proceeds of crime post the 2019 amendment.

Provisional attachment of property as a means of depriving the accused of their assets prior to a trial is another point of contention. Insofar as such attachment extends to the entirety of the property of the accused, there is a possibility that the person might find themselves without the means to defend themselves, thus compounding the inherent imbalance in the proceedings under the PMLA. To some extent, this issue was resolved by the Supreme Court in *P Chidambaram v. Enforcement Directorate*, wherein the Court observed that the right to legal representation is a part of the right to a fair trial under Article 21, but accused persons do not

⁹ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s 24.

¹⁰ *Vijay Madanlal Choudhary v Union of India* (2022) 9 SCC 1, para 240.

have much recourse in case of provisional attachment.¹¹

The forfeiture provision under Section 8(3) of the PMLA allows a special court to reserve forfeiture of property upon conviction for the offense of money laundering, whether the accused owns the property in question or not. This civil forfeiture element, strengthened through the 2019 changes, even where assets have been transferred to a third birthday party who knew or had affordable incentive to admit the truth represented the proceeds of crime, made the forfeiture regime massively better deterrent effect.¹²

5. Reporting Obligations, Financial Intelligence, and the Role of the FIU

The PMLA's preventive architecture is based on a duty framework, which includes banking companies, financial institutions and intermediaries¹³, and designated non-financial businesses and professions. These entities are required to keep records of all prescribed transactions, do ID verification and provide information about all suspicious transactions to the Financial Intelligence Unit-India (FIU-IND) under section 12 of the Act. The anti-money laundering intelligence framework of India is being led by a national body called the FIU-IND, which received, processed, analysed, and disseminated information concerning financial transactions involving suspects in 2004. It received more than 18 million Suspicious Transaction Reports (STRs), Cash Transaction Reports and Cross Border Wire Transfer Reports in its Annual Report for 2022-23 which mirrored the RBI's increasing efforts to promote compliances and enhance the Indian financial sector. The quality of STR analysis and the transfer into actionable information for law enforcement agencies, which includes the ED, however, continues to need improvement.¹⁴

The implementation of Know Your Customer (KYC) requirements has become considerably more effective owing to the Reserve Bank of India's Master Directions and the PMLA (Maintenance of Records) Rules, 2005, as amended from time to time. The introduction of video KYC, the linking of PAN and Aadhaar numbers to bank accounts, and the use of risk-based customer due diligence systems have made it easier for the financial sector to detect and

¹¹ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s 50.

¹² Enforcement Directorate v Axis Bank (2019) SCC Online Del 9032, para 14.

¹³ R. Sabareesh, Deependra Nath Pathak, Radha Ranjan, Ramachandran Devi Prasanna, P. Shalini & Eijaz Khan Bellary, "AI-Driven Fraud Detection in Banking: Enhancing Transaction Security", 4(3) *Journal of Informatics Education and Research* (2024).

¹⁴ Enforcement Directorate, Annual Report 2022-23 (Ministry of Finance, Government of India, New Delhi, 2023) p 14.

report suspicious transactions. Nevertheless, the level of compliance in the non-bank financial sector, the real estate sector, and among legal and accounting professionals continues to be an area of concern for FATF assessments in India.¹⁵

Substantial gaps in India's AML regime were revealed by the FATF's Mutual Evaluation of India carried out in 2010. They included poor suspicious transaction reporting, deficient supervision of DNBP's, and ineffective international cooperation in recovering laundered funds. In contrast to 2010, India made some progress in the following areas and was listed in the regular follow-up list of countries, rather than the enhanced follow-up list. At the same time, the 2024 Mutual Evaluation report indicated that there were still some serious shortcomings in investigating and prosecuting complicated laundering cases related to real estate and virtual assets.¹⁶

6. Critical Challenges in Anti-Money Laundering Enforcement

Despite the great strengthening of the legislative and institutional framework, several structural challenges remain to hamper the effectiveness of anti-money laundering enforcement in India. These challenges are examined under 4 heads below.¹⁷

The first and the most consistent obstacle is the dependence of the money laundering case on the development of the trial of the predicate offence. Despite the fact that, according to the interpretation of the PMLA, the process of attachment and investigation can be done regardless of the conviction on the predicate offence, the successful prosecution of the money laundering case is contingent on proving the proceeds of the crime. Should there be any delay in the predicate offence case, which often happens due to the overloaded Indian criminal courts, the money laundering case might remain unresolved for decades. This problem was highlighted in the FATF Report of 2024 as one of the major systemic barriers.¹⁸

The second issue relates to the problem of identifying beneficial ownership in corporate or trust structures. The practice of using shell companies, complex corporate structures, and nominee arrangements to conceal the identity of the ultimate beneficial owner of the laundered funds is one of the most common money laundering methods across the world. Disclosure requirements

¹⁵ P Chidambaram v Enforcement Directorate (2019) 9 SCC 24, para 27.

¹⁶ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s 8(3).

¹⁷ Financial Action Task Force, Mutual Evaluation Report: India (FATF, Paris, 2010) p 18.

¹⁸ Financial Action Task Force, Mutual Evaluation Report: India (FATF, Paris, 2024) p 7.

in regard to significant beneficial owners are provided by the Companies Act, 2013, while the amendment to the PMLA requires reporting entities to establish beneficial ownership as part of their customer due diligence process. Nonetheless, the enforcement of those obligations remains inconsistent, and the lack of public access to an up-to-date register of beneficial owners makes it impossible for reporting entities and law enforcement agencies to identify controllers of suspicious assets.¹⁹

Thirdly, there is the issue of regulating virtual assets. Virtual assets such as cryptocurrency have become increasingly popular as avenues for laundering money due to their anonymity and cross-border nature. Indeed, the Prevention of Money Laundering Act has been amended in 2023 to include virtual asset service providers as reporting entities, and the FATF has provided guidance on how to regulate virtual assets through anti-money laundering measures. But there are still challenges as regards the regulatory and enforcement framework necessary to regulate the fast-moving virtual asset industry. Moreover, the cross-border nature of virtual asset money laundering means that the current bilateral approach does not suffice in addressing the challenges.

The fourth challenge is the perception – and at times the reality – that the wide-ranging powers of the ED have been used for anything other than the fight against money laundering. The parallel of the political furias and the launch of the PMLA cases against the key political leaders have brought a sustained discourse on the independence and impartiality of the enforcement machinery. In *Pankaj Bansal v Union of India*, Supreme Court ruled that the grounds of arrest must be communicated to the arrested person in writing and not verbally; which it found to be at variance with the constitutional right guaranteed under Article 22. Further, in *Tarsem Lal v Directorate of Enforcement*, the Court further emphasized the need for the ED to exercise independent mind while taking the custody of an accused person already in custody of the court in respect of the predicate offence.²⁰

7. Judicial Interpretation and the Evolving Jurisprudence of the PMLA

PMLA jurisprudence is shaped, in large measure, by using the Supreme Court's most controversial provisions to engage with constitutional measures. The arc of this jurisprudence

¹⁹ Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s 12.

²⁰ Financial Intelligence Unit-India, Annual Report 2022-23 (Ministry of Finance, Government of India, New Delhi, 2023) p 11.

reflects concerns between two legitimate institutional concerns: Ensures that they are applied within constitutional limits.²¹

In the case of Vijay Madanlal Choudhary, the Supreme Court, by majority opinion, upheld the constitutional validity of the two bail conditions, reverse burden of proof, wide meaning of 'proceeds of crime', power of search and seizure, and admission of statements made under Section 50. The reasoning of the majority opinion has been seen to place much emphasis on the unique nature of money laundering, the legitimate concern of the State against financial crimes, and the intent of Parliament to provide a tough enforcement tool. This judgment has been criticized by jurists on account of the perceived lack of adequate rigor in the application of the constitutional standards of proportionality and reasonable classification.²²

However, subsequent decisions have brought some temperance to the position adopted by the Supreme Court in the Vijay Madanlal Choudhary case. In the case of Pankaj Bansal v Union of India, for instance, the Supreme Court, deviating from a part of the reasoning in Vijay Madanlal Choudhary, decided that the provision of informing the arrested individual about the grounds of arrest as provided in Article 22(1) of the Constitution must be done in writing.²³

The decision of *Arvind Kejriwal v. Enforcement Directorate* (2024) provided a further consideration of the factors under which anticipatory bail may be granted in cases under the PMLA and the criteria of application by the court for exercising its discretion on the basis of the twin conditions laid down in Section 45. It was clarified by the Court that the twin conditions do not completely nullify the discretion of the court and that the satisfaction referred to in the section was one of prima facie nature and not of guilt.²⁴

8. Conclusion

Money laundering is one of the most serious and impactful financial crimes that the Indian state is facing and the Prevention of Money Laundering Act, 2002 is a serious and sustained effort to combat this financial crime. The architecture for AML in India is a combination of its definition, enforcement mechanism, reporting requirements and attachment and confiscation

²¹ Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (as amended), r 3.

²² N Bhasker Rao, "The Enforcement Directorate and the Architecture of Anti-Money Laundering Enforcement in India" (2019) 61 Journal of the Indian Law Institute 47, 53.

²³ Manish Kumar Shahi v State of Bihar (2021) SCC Online SC 315, para 9.

²⁴ Gautam Kundu v Enforcement Directorate (2015) 16 SCC 1, para 22.

mechanism, which has been continually enhanced and which broadly aligns with the FATF recommendations, as India has been on the periodic follow-up list after the 2024 Mutual Evaluation. The Enforcement Directorate has been active in almost all its powers and the number of attachments and prosecutions has increased significantly.

Meanwhile, the PMLA sits on the precipice of two competing demands: the state's desire to prevent financial crime, and the individual's rights to freedom from inquisitorial governmental action under constitutional protection of due process, which the law must balance, but cannot simply resolve in favour of. From *Nikesh Tarachand Shah to Vijay Madanlal Choudhary and Pankaj Bansal and Tarsem Lal*, the Supreme Court has been grappling with this balance throughout its process of judgment, and so far there is no total clarity or uniformity in this judicial landscape. The opacity of beneficial ownership, delays in predicate offences, virtual asset regulation, and selective enforcement are each challenging issues that call for specific measures that extend beyond the legislative text.²⁵

At its most basic level, money laundering is a crime that relies on the inability of legitimate systems to spot and reject criminal money. For this reason, combating the problem calls for not just a tough legislation, but also a financial system capable of spotting and reporting suspicious transactions, a prosecutorial framework equipped with the technical know-how to trace complicated financial tracks, a judicial system that can handle complicated cases efficiently, and an institutional environment in which the rule of law is seen not only as something that mandates action, but as something that constrains it. With appropriate reform and enough institutional investment, the PMLA can be the basis of such a strategy. It remains to be seen whether that possibility is realized.²⁶

²⁵ *Puttaswamy (Privacy) v Union of India* (2017) 10 SCC 1, para 178.

²⁶ V Umakanth, "Beneficial Ownership Disclosure and the Problem of Shell Companies in the Indian Anti-Money Laundering Framework" (2020) 32 National Law School of India Review 89, 96.

REFERENCES

A. Books

1. V S Dattar, *Commentary on the Prevention of Money Laundering Act, 2002*, 3rd edn (LexisNexis, New Delhi, 2020).
2. K D Raju, *Money Laundering Laws in India: Law and Practice* (Eastern Book Company, Lucknow, 2010).
3. Nikos Passas and Kimberly Blankenship, *Combating Money Laundering and the Financing of Terrorism* (Kluwer Law International, The Hague, 2008).
4. United Nations Office on Drugs and Crime, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crime* (UNODC, Vienna, 2011).

B. Articles and Journals

5. K D Raju, "Prevention of Money Laundering Act, 2002: Critical Analysis" (2008) 3 SCC (Journal) 1.
6. N Bhasker Rao, "The Enforcement Directorate and the Architecture of Anti-Money Laundering Enforcement in India" (2019) 61 Journal of the Indian Law Institute 47.
7. V Umakanth, "Beneficial Ownership Disclosure and the Problem of Shell Companies in the Indian Anti-Money Laundering Framework" (2020) 32 National Law School of India Review 89.
8. Arun Kumar Singh, "Reverse Burden of Proof under the PMLA and the Constitutional Guarantee of Presumption of Innocence" (2023) 65 Journal of the Indian Law Institute 112.
9. Shreya Rastogi, "From Nikesh Tarachand Shah to Vijay Madanlal Choudhary: The Trajectory of Bail Jurisprudence under the PMLA" (2023) 15 NUJS Law Review 45.
10. P M Bakshi, "Predicate Offences and the Definitional Structure of Money Laundering

under Indian Law" (2014) 56 Journal of the Indian Law Institute 201.

C. Cases

11. *Vijay Madanlal Choudhary v Union of India* (2022) 9 SCC 1.

12. *Nikesh Tarachand Shah v Union of India* (2018) 11 SCC 1.

13. *Pankaj Bansal v Union of India* (2023) 14 SCC 607.

14. *P Chidambaram v Enforcement Directorate* (2019) 9 SCC 24.